

# HONG KONG

SUBMISSION TO THE  
SECURITY BUREAU ON  
BASIC LAW ARTICLE 23  
LEGISLATION PUBLIC  
CONSULTATION  
DOCUMENT

**AMNESTY**  
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# OVERVIEW

Amnesty International submits the following comments on the Hong Kong Special Administrative Region (HKSAR)'s *Safeguarding National Security: Basic Law Article 23 Legislation Public Consultation Document* (hereafter Consultation Document or CD), issued by the Security Bureau on 30 January 2024 and open for public comment until 28 February 2024.

Article 23 of the Basic Law states: “The HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies.”

As part of its work, Amnesty International globally promotes the adoption of legal instruments that protect internationally recognized human rights. This brief submission contains Amnesty International’s analysis of the extent to which legislative proposals included in the Consultation Document are compatible with Hong Kong’s international human rights obligations, whether embodied in treaties and other instruments, or under customary international law. Amnesty International hopes that these comments will be considered for any draft bill under Article 23. Amnesty recognizes that every government has the right and duty to protect its citizens, and that some jurisdictions have specific security concerns. But these may never be used as an excuse to deny people the right to express different political views and to exercise their other human rights as protected by international legal standards.

In this submission, Amnesty International focuses on concerns with the consultation process, overarching concerns, including the ongoing implementation of the Hong Kong National Security Law (NSL) and the chilling effect it has had on freedoms of expression and association, the new or proposed offences, and proposed changes to the legal system and enforcement mechanisms. The issues and provisions cited below are illustrative and do not purport to constitute a comprehensive human rights analysis of the questions posed in the Consultation Document or otherwise discussed in connection with the proposed Article 23 legislation.

The proposals that have been put forward by the government go far beyond the requirements according to the Basic Law to enact Article 23 legislation. Amnesty International also regrets that the Hong Kong government has not taken this opportunity to modernize Hong Kong legislation by removing outdated colonial legislation and instead further entrenched some colonial offences.

**Amnesty International urges the Hong Kong government to halt the current legislative process because it is being conducted in an environment where meaningful public consultation is not possible, the proposals lack legal certainty, demonstrated necessity, or proportionality, and there are not adequate safeguards to ensure compliance with human rights as the process moves forward. In the event that the government nonetheless continues the current legislative process under Article 23 of the Basic Law, Amnesty urges the government to ensure that any new legislation will be compatible with international human rights law and standards and human rights obligations under Hong Kong law.**

# GENERAL CONCERNS WITH CONSULTATION PROCESS

Amnesty International is concerned that the government has presented a Consultation Document and not the full text of the draft bill, also called a White Bill in draft stage, or a Blue Bill if gazetted, of the “Safeguarding National Security Ordinance” (hereafter “Ordinance”) which means that the public have been asked to consult on a legislative proposal without specific information as to how the Bill may be worded, or even which procedural changes to enforcement mechanisms may be adopted. There is no indication that after a Blue Bill is presented to the Legislative Council that there will be another public consultation.

The Consultation Document in many areas lacks details on the wording or even the changes that the government plans to make, making the process non-transparent. For example, the proposed changes to the “legal system and enforcement mechanisms” are not clearly defined, as detailed later in this submission, and the CD does not include the proposed penalties for new offences.

Amnesty International also does not consider the present timetable of four weeks as adequate for the public to study the proposals. Under international human rights standards, citizens must be enabled to effectively participate in and exert influence on the conduct of public affairs.<sup>1</sup> This requires that public participation is informed as adequate and necessary and provides sufficient opportunity to exercise meaningful influence, so that public institutions can make decisions that are sustainable, and are themselves more effective, accountable and transparent.<sup>2</sup> The justification for the timing of the public consultation period is that “[the] legislation on Article 23 of the Basic Law has been under discussion for over 20 years” and that there is a “pressing need” for the Hong Kong government to “fulfil our constitutional duties”.<sup>3</sup> Amnesty International is concerned that the repeated expressions by government officials and stated urgency in the CD may prevent the government from carefully addressing concerns in the ostensible interest of expediency, despite this being a legislative matter of utmost concern to the exercise of human rights.

**Amnesty International is calling for a longer, inclusive, effective and more transparent public consultation period, including a White Bill to be presented to and discussed by a fully informed public.**

# HONG KONG’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The Hong Kong Basic Law, the constitutional document for the Hong Kong Special Administrative Region, states that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were ratified by the UK and extended to Hong Kong in 1976, shall remain in force and shall be implemented through local laws. Under the Basic Law, the rights and freedoms enjoyed by Hong Kong residents and others in Hong Kong

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<sup>1</sup> International Covenant on Civil and Political Rights (ICCPR), Article 25; UN Human Rights Committee (HRC), General Comment 25: Participation in Public Affairs and the Right to Vote (Article 25), 12 July 1996, UN Doc. CCPR/C/21/Rev.1/Add.7, paras 1, 8.

<sup>2</sup> United Nations High Commissioner for Human Rights, *Guidelines for States on the effective implementation of the right to participate in public affairs*, 20 July 2018, <https://www.ohchr.org/en/documents/tools-and-resources/guidelines-effective-implementation-right-participate-public-affairs>, paras 2, 55, 67, 68.

<sup>3</sup> Hong Kong SAR Security Bureau, “Safeguarding National Security: Basic Law Article 23 Legislation Frequently Asked Questions”, <https://www.sb.gov.hk/eng/bl23/faq.html> (accessed 5 February 2024), “Question 4: How long is the consultation period? How can members of the public express their views?”.

shall not be restricted unless as prescribed by law and any such restrictions shall not contravene the provisions of the ICCPR.<sup>4</sup> Hong Kong is further bound by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and other international human rights treaties as well as customary international law.<sup>5</sup>

According to internationally recognized human rights standards, as reflected, for instance, in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles),<sup>6</sup> “national security” cannot be invoked to justify restrictions on rights and freedoms unless genuinely and demonstrably intended to protect a state’s existence or territorial integrity against specific threats of the use of force; nor can this national security framework legitimately be applied by governments to protect themselves against embarrassment or exposure of wrongdoing, or to entrench a particular ideology.<sup>7</sup>

Expressions can only be punished on national security grounds if the authorities can demonstrate a clear and imminent danger of violence.<sup>8</sup> In particular, advocacy for a change in government or government policy, if done peacefully, as well as criticism or even insult to a state’s institutions or its symbols, or exposure of human rights violations, must not be penalized.<sup>9</sup>

According to the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, a state cannot use national security as a reason to impose limitations on rights to prevent merely local or relatively isolated threats to law and order.<sup>10</sup> A state must also not invoke national security as a justification for measures aimed at suppressing opposition to human rights violations or at perpetrating repressive practices against its population.<sup>11</sup> Nor may this be used as an excuse to deny people the right to express different political views and to exercise their other human rights as protected by international legal standards.

Likewise, demanding territorial changes in the form of autonomy or even secession in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and national security.<sup>12</sup>

The UN Human Rights Committee, tasked with monitoring implementation of the ICCPR, which as mentioned is binding on Hong Kong, has frequently rejected attempts to justify far-reaching restrictions with vague references to “national security”. For example, this goal could never be served by attempts to muzzle advocacy of multi-party systems or human rights, or by decreasing the plurality of associations in a society – including associations that peacefully promote ideas not favourably received by the government. Consequently, prohibition of an organization or use of criminal prosecution to restrict the freedom to associate or to be a member of such an organization can only be justified if it is, in fact, necessary to avert a real, not just hypothetical, danger to national security.<sup>13</sup>

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<sup>4</sup> Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, Articles 4, 27, 34 and 39.

<sup>5</sup> Hong Kong is bound by customary international law and such international treaties as ratified by China (or the United Kingdom prior to 1 July 1997, when China resumed sovereignty over Hong Kong). Both the ICCPR and CAT were ratified by the UK government, as China did with the CAT in 1988, and remain binding on Hong Kong. The Convention on the Elimination of all forms of Discrimination Against Women was extended to Hong Kong by the United Kingdom in 1996 and continues to apply. China notified the UN Secretary-General in 1997 that the Convention on the Rights of the Child would apply to Hong Kong, subject to numerous reservations. China ratified the Convention on the Rights of Persons with Disabilities (CPRD) on 1 August 2008 and declared that the convention would apply to Hong Kong.

<sup>6</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by Article 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand in Johannesburg, November 1996, [www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf](http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf).

<sup>7</sup> Johannesburg Principles (previously cited), Principle 2.

<sup>8</sup> Principle 6: Expression That May Threaten National Security Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. Johannesburg Principles (previously cited), Principle 6.

<sup>9</sup> Johannesburg Principles (previously cited), Principle 7.

<sup>10</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, para. 30.

<sup>11</sup> Siracusa Principles (previously cited), para. 32.

<sup>12</sup> European Court of Human Rights, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, application numbers (29225/95 and 29221/95), 2001, para. 97.

<sup>13</sup> HRC, *Lee v. South Korea*, Communication No. 1119/2002, Views adopted on 20 July 2005, <http://hrlibrary.umn.edu/undocs/1119-2002.html>, para 7.2.

Furthermore, any provisions relating to national security, whether in the form of “treason” or “sedition” laws or similar, must strictly comply with the general rules on freedom of expression.<sup>14</sup> Such provisions may not be used to reduce the civic space, including the online sphere, for debate and academic freedom. To punish people for simply publishing and distributing material expressing views that oppose the positions or policies of the government is a form of censorship.<sup>15</sup> The Human Rights Committee has further stated that, in any event, if “the very reason that national security has deteriorated is the suppression of human rights, this cannot be used to justify further restrictions, including on the right of peaceful assembly”.<sup>16</sup>

Amnesty would also like to remind the HK government that the “principle of legal certainty” under Article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle has also been affirmed by Hong Kong’s courts, as the Court of Final Appeal ruled in 2005 that a law “must be formulated with sufficient precision to enable the citizen to regulate his conduct”.<sup>17</sup> This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse and may lead to arbitrary deprivation of liberty.

## HUMAN RIGHTS SAFEGUARDS AND REVIEW BY COURTS

Amnesty welcomes that the Consultation Document states “Human rights are to be respected and protected” as a legislative principle, cites Chapter III of the Basic Law, and that “[the] rights and freedoms, including the freedom of speech, of the press, of publication, the freedoms of association, of assembly, of procession and of demonstration, enjoyed under the Basic Law and the provisions of the ICCPR and ICESCR as applied to the HKSAR, should be protected in accordance with the law”, and references that Article 4 of the NSL provides that “human rights shall be respected and protected in safeguarding national security in the HKSAR”.<sup>18</sup> Amnesty would like to remind the Hong Kong government that under Article 39 of the Basic Law, the provisions of the ICCPR and ICESCR remain in force in Hong Kong and “shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”<sup>19</sup> Accordingly, the Ordinance proposed in the CD should not infringe on the rights and freedoms guaranteed by the Basic Law, or international human rights law as binding on Hong Kong.

Under Articles 11 and 18 of the Basic Law,<sup>20</sup> laws that contravene the Basic Law are shall be unconstitutional.<sup>21</sup> Hong Kong courts also have the duty to enforce the Basic Law, including to ensure legislation adheres to the Basic Law.

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<sup>14</sup> HRC, General Comment 34: Freedom of opinion and expression (Article 19), 12 September 2011, UN Doc. CCPR/C/GC/34, para. 30.

<sup>15</sup> See also Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report: The protection of sources and whistleblowers, 8 September 2015, UN Doc. A/70/361, para. 72

<sup>16</sup> HRC, General Comment 37: Right of peaceful assembly (Article 21), 17 September 2020, CCPR/C/GC/37, para. 42.

<sup>17</sup> Court of Final Appeal of the Hong Kong SAR, *Leung Kwok Hung v HKSAR*, [2005] HKCFA 41, Final Appeal Judgment, 8 July 2005, <https://www.hklii.hk/en/cases/hkcfca/2005/41?hl=%5B2005%5D%203%20HKLRD%20164>, para. 27.

<sup>18</sup> Hong Kong SAR Security Bureau, Safeguarding National Security: Basic Law Article 23 Legislation Public Consultation Document, 30 January 2024, [https://www.sb.gov.hk/eng/bl23/doc/Consultation%20Paper\\_EN.pdf](https://www.sb.gov.hk/eng/bl23/doc/Consultation%20Paper_EN.pdf), para. 2.19.

<sup>19</sup> Basic Law of the Hong Kong SAR (previously cited), Article 39.

<sup>20</sup> Article 11 states that “No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law” and Article 18 states “The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.” Article 8 states: “The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.” Basic Law of the Hong Kong SAR (previously cited), Articles 8, 11, 18.

<sup>21</sup> Johannes Chan, “Basic law and constitutional review: The first decade”, 2007, *Hong Kong Law Journal*, Volume 37, <https://hub.hku.hk/bitstream/10722/87975/3/content.pdf>, p. 409.

**Amnesty International urges the Hong Kong government to ensure the proposed Ordinance does not contravene the human rights protections within the Basic Law, and that it is subject to full and effective review by local courts.**

# OVERARCHING CONCERNS

## DEFINITION OF NATIONAL SECURITY

The Consultation Document states that Hong Kong government would adopt the same definition of national security found in the National Security Law of the People's Republic of China (2015), which reads: "National security refers to the status in which the State's political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the State are relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security."<sup>22</sup>

China's national security law touches on nearly every aspect of society, including environment, defence, finance, information technology, culture, ideology, education and religion. The UN High Commissioner for Human Rights at the time of its enactment called it concerning because of its "extraordinarily broad scope coupled with the vagueness of its terminology and definitions".<sup>23</sup> Amnesty International called on China to repeal the law, and regrets that it has yet to take that step.<sup>24</sup>

The Siracusa Principles provide that national security should be defined to allow human rights restrictions "only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force."<sup>25</sup> As discussed above, the principles go on to provide that the concept cannot be used to allow for "vague or arbitrary" limitations.<sup>26</sup>

**Amnesty International urges the Hong Kong government to ensure the proposed Ordinance includes a clear definition of national security that is grounded in the principles of legality, necessity, proportionality and compliance with human rights; that any definition adheres to the Basic Law; and any designation of endangering national security under the Ordinance is subjected to full, effective and independent review by Hong Kong's courts.**

## ONGOING IMPLEMENTATION OF THE HONG KONG NATIONAL SECURITY LAW

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL) was unanimously passed by China's National People's Congress Standing Committee and enacted in Hong Kong on 30 June 2020 without any formal, meaningful public or other local consultation. The NSL encompasses two crimes—secession and subversion—that were intended to be legislated under Article 23 but will not be.<sup>27</sup> Amnesty International is concerned about how the ongoing implementation of the NSL impedes fulfilment of Hong Kong's human rights obligations, about the possibility of double criminality under the law, and about the effect of the NSL during the legislative process for the proposed Ordinance.

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<sup>22</sup> National People's Congress, "中华人民共和国国家安全法（主席令第二十九号）" [National Security Law of the People's Republic of China (Presidential Order No. 29)], 1 July 2015, [https://web.archive.org/web/20150725162038/https://www.gov.cn/zhengce/2015-07/01/content\\_2893902.htm](https://web.archive.org/web/20150725162038/https://www.gov.cn/zhengce/2015-07/01/content_2893902.htm).

<sup>23</sup> Office of the UN High Commissioner for Human Rights (OHCHR), "UN human rights chief says China's new security law is too broad, too vague", 7 July 2015, <https://www.ohchr.org/en/press-releases/2015/07/un-human-rights-chief-says-chinas-new-security-law-too-broad-too-vague>.

<sup>24</sup> Amnesty International, "China: Scrap draconian new national security law", 1 July 2015, <https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/>.

<sup>25</sup> Siracusa Principles (previously cited), para. 29.

<sup>26</sup> Siracusa Principles (previously cited), para. 30.

<sup>27</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 2.18



Since the implementation of the NSL, Amnesty International has documented a wide range of human rights violations in Hong Kong.<sup>28</sup> The arrests and prosecutions made under national security charges since the enactment of the law provide clear evidence that the law's expansive definition of "national security" lacks clarity and legal predictability.<sup>29</sup> The law's lack of exemption for any legitimate expression, peaceful protest or work defending human rights allows the law to be used to limit rights and freedoms in ways that exceed what is permitted under international human rights law and standards.<sup>30</sup>

Amnesty International is also concerned about retroactive application of the NSL. The government made assurances when the NSL was enacted that it would not apply retroactively,<sup>31</sup> but in at least one NSL "collusion with foreign forces" trial, the prosecution presented evidence in court of activities that occurred before the enactment of the NSL.<sup>32</sup>

The NSL authorizes extensive investigative powers and can potentially exempt law enforcement agencies from fulfilling existing obligations to respect and protect human rights stipulated in Hong Kong laws, and makes the already incomplete human rights safeguards in Hong Kong's criminal process even less effective.<sup>33</sup> The NSL has already effectively reversed the presumption of innocence<sup>34</sup> and placed the burden on the defence to establish that pretrial detention is unnecessary and disproportionate,<sup>35</sup> thus violating core principles of the rights to fair trial and to liberty and security of the person. When defendants face an unreasonably stringent threshold for bail and repeated rejection of their bail applications, even after agreeing to very extensive and sometimes unprecedented restrictions, and when they then cannot file a judicial review for the compatibility of the law and the human rights safeguards in local and international laws because the courts have decided that the law deprives them of the power to do so, it effectively leaves them without a remedy. Of all the individuals charged with offences under the NSL, nearly 70% have been remanded into custody after having their bail applications rejected, some for more than two years since their arrest.<sup>36</sup>

Amnesty would also like to remind the Hong Kong government that United Nations human rights mechanisms have repeatedly expressed concern about the NSL and called on the Hong Kong government to stop applying the law until it is repealed. The UN Human Rights Committee recommended in November 2022 while assessing the government's implementation of the ICCPR to: "Take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying it."<sup>37</sup> The Committee on the Rights of Persons with Disabilities (CRPD) also called on Hong Kong and China to "urgently repeal and independently review" the NSL in its Concluding Observations on the combined second and third periodic

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<sup>28</sup> Amnesty International, *Hong Kong: In the name of national security* (Index Number: ASA 17/4197/2021), 29 June 2021, <https://www.amnesty.org/en/documents/asa17/4197/2021/en>; Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (Index Number: ASA 17/5663/2022), 31 May 2022, <https://www.amnesty.org/en/documents/asa17/5663/2022/en>; Amnesty International, *Hong Kong: Submission to the UN Committee on Economic, Social and Cultural Rights: 73rd Session, 13 February – 3 March 2023* (Index Number: ASA 17/6355/2023), 17 January 2023, <https://www.amnesty.org/en/documents/asa17/6355/2023/en>.

<sup>29</sup> Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (previously cited), p. 7.

<sup>30</sup> Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (previously cited), pp. 9-14.

<sup>31</sup> The Standard HK, "Carrie Lam assures UN rights body law will not be retroactive", 30 June 2020, <https://www.thestandard.com.hk/breaking-news/section/4/150100/Carrie-Lam-assures-UN-rights-body-law-will-not-be-retroactive>;

<sup>32</sup> Reuters, "Overseas figures reject prosecution accusations in Hong Kong trial of Jimmy Lai", 3 January 2024, <https://www.reuters.com/world/china/overseas-figures-refute-allegations-hong-kong-security-trial-jimmy-lai-2024-01-03/>; Radio Free Asia, "Hong Kong media mogul charged over actions, speech predating security law", 14 December 2020, <https://www.rfa.org/english/news/china/charged-12142020131823.html>.

<sup>33</sup> Article 42 of the NSL states that "No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security." Article 43 lists measures that police may take in investigating national security crimes, and such measures were introduced into Hong Kong law under the local Implementation Rules. The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 2020, [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf); Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 2020, <https://www.elegislation.gov.hk/hk/A406A>. Amnesty International, *Hong Kong: In the name of national security* (previously cited), pp. 12-18.

<sup>34</sup> As provided for by the ICCPR Article 14(2): Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

<sup>35</sup> The presumption of release pre trial is codified in ICCPR Article 9(3).

<sup>36</sup> For example, Chow Hang-tung was charged with "inciting subversion" under the NSL in September 2021 and remanded into custody and denied bail following a number of applications, most recently in December 2023. Reuters, "Bail denied to Hong Kong rights lawyer in landmark security case", 21 December 2023, <https://www.reuters.com/world/china/bail-denied-hong-kong-rights-lawyer-landmark-security-case-2023-12-21/>; ChinaFile, "Tracking the Impact of Hong Kong's National Security Law", 5 January 2024, <https://www.chinafile.com/tracking-impact-of-hong-kongs-national-security-law> (accessed 13 February 2024).

<sup>37</sup> HRC, Concluding observations on the fourth periodic report of Hong Kong, China, 11 November 2022, UN Doc. CCPR/C/CHN-HKG/CO/4, para. 14(a).

reports of China in October 2022.<sup>38</sup> In March 2023, the Committee on Economic, Social and Cultural Rights (CESCR) in its Concluding Observations on the third periodic report of China's implementation of the ICESCR recommended the Hong Kong government to review the NSL with China to "ensure the full independence of the judiciary and to ensure that national security legislation is not arbitrarily used to interfere with it", to "immediately provide all due process guarantees", and to ensure the NSL does not infringe on the rights to form a trade union, to education and to cultural life.<sup>39</sup> It also recommend Hong Kong abolish the national security hotline, which was established in November 2020 for members of the public to report tips to the national security police but as the Committee noted, "might have detrimental effects on the work and expression of civil society, trade unions, teachers and other actors, including those mentioned above, working on human rights."<sup>40</sup>

The findings of the UN treaty bodies follow repeated interventions from UN Special Procedures about the NSL ever since the Chinese central government announced its plan to push the legislation through.<sup>41</sup> At the time of this submission, nine communications have been sent to the Hong Kong government detailing concerns on how the NSL does not comply with international human rights law, including its impact on civil and political rights in Hong Kong,<sup>42</sup> on civil society,<sup>43</sup> on freedom of speech, education and academic freedom,<sup>44</sup> on individual human rights defenders and groups prosecuted under the law,<sup>45</sup> on the applicability of the ICCPR on law enforcement and judicial activity,<sup>46</sup> on legal aid,<sup>47</sup> and efforts to apply the NSL to acts that, among other things, occurred outside the Hong Kong SAR's territory.<sup>48</sup> The concerns raised by UN human rights experts were elevated during China's Universal Periodic Review in January 2024, when eight UN Member States recommended that China repeal the NSL.<sup>49</sup>

Under the NSL, defendants can be transferred to the mainland for prosecution,<sup>50</sup> though to date, no such transfers have taken place. While the Consultation Document did not mention transfer to mainland for trial, Chief Executive John Lee said in a press conference on 30 January 2024: "The law we are legislating will have no element at all about sending any arrested persons in Hong Kong to the Mainland. So that is very clear. It is a piece of legislation to deal with the activities in Hong Kong, in Hong Kong trials, and according to

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<sup>38</sup> CRPD, Concluding Observations on the combined second and third periodic reports of China, 10 October 2022, UN Doc. CRPD/C/CHN/CO/2-3, para. 74.

<sup>39</sup> CESCR, Concluding observations on the third periodic report of China, including Hong Kong, China, and Macao, China, 22 March 2023, UN Doc. E/C.12/CHN/CO/3, paras. 101, 103, 115, 127, 129.

<sup>40</sup> CESCR, Concluding observations (previously cited), paras. 102-3; Hong Kong Police Force, "Official Launch of National Security Department Reporting Hotline", [https://www.police.gov.hk/ppp\\_en/04\\_crime\\_matters/nsdrh.html](https://www.police.gov.hk/ppp_en/04_crime_matters/nsdrh.html) (accessed 26 February 2024).

<sup>41</sup> UN Special Procedures, Comments on the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region, 19 June 2020, UN Doc. OL CHN 13/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25354>.

<sup>42</sup> OHCHR, "UN experts call for decisive measures to protect fundamental freedoms in China", 26 June 2020, <https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freedoms-china>

<sup>43</sup> UN Special Procedures, Comments on The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("National Security Law"), 1 September 2020, UN Doc. OL CHN 17/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25487>.

<sup>44</sup> UN Special Procedures, Allegations concerning the erosion of the right to freedom of speech, education and academic freedom in the Hong Kong Special Administrative Region (HKSAR) since the enactment of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 13 August 2021, UN Doc. AL CHN 9/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26592>.

<sup>45</sup> UN Special Procedures, Allegations concerning the arrest and detention of barrister, woman human rights defender and pro-democracy activist Ms. Chow Hang-Tung, 21 September 2021, UN Doc. UA CHN 10/2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26658>; UN Special Procedures, Allegations received concerning multiple cases filed against Jimmy Lai Chee-ying (Jimmy Lai), 17 March 2023, UN Doc. AL CHN 1/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27848>.

<sup>46</sup> UN Special Procedures, Comments on the applicability of the International Covenant on Civil and Political Rights to law enforcement and judicial activity carried out under The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 14 February 2022, UN Doc. OL CHN 3/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27082>.

<sup>47</sup> UN Special Procedures, Information received concerning provisions of the National Security Law, amendments to the Legal Aid Scheme, and proposed amendments to the Legal Practitioners Bill in Hong Kong., 19 April 2023, UN Doc. OL CHN 2/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27992>.

<sup>48</sup> UN Special Procedures, Information received concerning the implementation of the National Security Legislation (NSL) in the Hong Kong Special Administrative Region (SAR), specifically in the 6 February 2023 start of the first trial of 47 individuals accused of crimes under the NSL; as well as the issuance of arrest warrants by the Hong Kong SAR's National Security Police for seven individuals, all self-exiled, for crimes under the NSL, reportedly for acts that, inter alia, occurred outside Hong Kong SAR's territory, 31 August 2023, UN Doc. AL CHN 16/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28323>.

<sup>49</sup> OHCHR, "Questions submitted in advance", Universal Periodic Review – China Fourth Cycle, 23 January 2023, <https://www.ohchr.org/en/hr-bodies/upr/cn-index>; UN Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review, 26 January 2024, UN Doc. A/HRC/56/6.

<sup>50</sup> Law of Safeguarding National Security in the Hong Kong SAR (previously cited), 2020, [https://www.elegislation.gov.hk/fwddoc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf), Article 55.

Hong Kong laws.”<sup>51</sup> Amnesty International is concerned that defendants may continue to face the prospect of transfer to mainland China for trial if accused of the two crimes of secession and subversion. Amnesty is also concerned that the repeated reference to offences in the NSL in connection to the proposed Ordinance does not clearly delineate if an individual could be charged for the same activity under both the Ordinance and the NSL, and be subject to transfer to the mainland for trial.<sup>52</sup> Any proposed Ordinance must make clear how double criminality under both it and the NSL or other existing criminal laws is excluded, in line with Article 14(7) of the ICCPR and respective provisions in Hong Kong law.

The environment under which the legislative process is taking place – namely, in a context of vigorous implementation of the NSL – prevents free and open discussion of the proposals. Immediately after the NSL was implemented, the government began using it extensively to target peaceful dissent.<sup>53</sup> By accusing political parties, academics and other organizations and individuals actually or perceived to be critical of the present government and political system in Hong Kong or mainland China of “threatening national security”, the authorities have sought to justify censorship, harassment, arrests and prosecutions that violate human rights.

Amnesty International is concerned that the legislative process for Article 23 legislation conducted while the NSL is in effect prevents different sectors of society from effectively, adequately and safely taking part in the consultation process, due to the NSL’s chilling effect on civil society and criticism of the present government and political system in Hong Kong or mainland China.<sup>54</sup>

**Amnesty urges the Hong Kong government to implement the recommendation of the UN Human Rights Committee to stop applying the National Security Law (NSL) until it has been repealed; ensure that the proposed Ordinance prohibits double criminality, and urges the government to ensure that a broad range of civil society representatives are able to take part in a free, open and meaningful public consultations on the proposed Article 23 and other legislations.**

## RETROACTIVITY

Amnesty International welcomes the note in the “Rebuttal/Frequently Asked Questions” webpage accompanying the Consultation Document stating that “the offences created by this legislation will not have retrospective effect”.<sup>55</sup> This is in line with Article 12 of the Hong Kong Bill of Rights and international legal standards. International human rights law stipulates that no criminal law should be retroactively applied in any circumstances.<sup>56</sup> Changes in rules of procedure and evidence under certain circumstances can also lead to retroactive application.<sup>57</sup> The principle of legality requires, first, that the prosecution prove each element of the crime to the required legal standard; second, that the accused need to have had certainty, foreseeability of criminalization and the enjoyment of legal benefits as existing at the time (meaning that at the time of commission, they needed to know that their acts or omissions would lead to potential criminal liability); and, third, that criminal courts do not punish acts that are not punishable under the law(s) cited in the charges.<sup>58</sup> These strict rules provide safeguards against arbitrary prosecution, conviction and punishment.

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<sup>51</sup> Government of the HKSAR, “Transcript of remarks of press conference on ‘Safeguarding National Security: Basic Law Article 23 Legislation Public Consultation”, 30 January 2024, <https://www.info.gov.hk/gia/general/202401/30/P2024013000475.htm>.

<sup>52</sup> For example, Article 29 and 30 of the NSL deal with offences of “collusion with a foreign country or with external elements to endanger national security” but the Consultation Document proposes a new element of the offence of “espionage” to include “Colluding with an external force to publish a statement of fact that is false or misleading to the public”. Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), p. 61

<sup>53</sup> Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (previously cited), p. 7.

<sup>54</sup> Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (previously cited), pp. 7, 11.

<sup>55</sup> Hong Kong SAR Security Bureau, “Basic Law Article 23 Legislation Frequently Asked Questions” (previously cited)

<sup>56</sup> ICCPR, Articles 4 and 15(1).

<sup>57</sup> HRC, Views: *Nicholas v. Australia*, adopted on 19 March 2004, UN Doc. CCPR/C/80/D/1080/2002, para 7.7.

<sup>58</sup> ICCPR, Article 15; African Charter of Human and People’s Rights (ACHPR), Article 7; European Convention on Human Rights (ECHR), Article 7; Inter American Convention on Human Rights (IACHR), Article 9.

**Amnesty International urges the Hong Kong government to ensure that the proposed Ordinance and its enactment strictly adheres to the principle that no criminal law should be retroactively applied in any circumstances.**

## CONCERNS REGARDING REFERENCE TO OVERSEAS LEGISLATION

The Consultation Document cites legislation from a number of other jurisdictions as being the inspiration or model for various provisions, including many which are examined in this submission.<sup>59</sup> Amnesty International is concerned that the HK government has selectively cited legislation in its favour, including references to provisions that have been criticised for not adhering to international human rights laws and standards.<sup>60</sup>

For decades, Amnesty International has highlighted concerns with national security legislation in countries around the world for violating human rights laws and standards. In recent years, Amnesty has conducted research and analysis on concerns around the application of national security provisions in Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States of America – all among the countries listed as reference resources for the drafting of the Consultation Document. In order to underline the fact that ensuring national security legislation fully respects human rights continues to be a challenge globally, Amnesty International shares its analysis and recommendations to those governments in Annex 1, and invites the Hong Kong government to consult these as relevant reference materials. In addition to the countries cited in the CD, it may be helpful for the Hong Kong government to review analysis of national security legislation regionally, such as Amnesty’s comments to the government of South Korea on its national security law.<sup>61</sup> However, it is worth noting that such analysis should also be understood against the backdrop and specific conditions of each country with respect to the enactment and enforcement of such laws and the applicable judicial safeguards.

Amnesty International respectfully submits that any Article 23 legislation, if it is truly to be human rights compatible, must be keeping with international human rights law and standards.

# CONCERNS ON PROPOSED NEW OR AMENDED OFFENCES

The Consultation Document proposes to amend existing legislation or create new offences in the Ordinance to prohibit the following:

- Prohibiting treason and related acts (*pp. 29-35*)
- Prohibiting insurrection, incitement to mutiny and disaffection, and acts with seditious intention (*pp. 36-45*)
- Prohibiting theft of state secrets and espionage (*pp. 46-63*)

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<sup>59</sup> Hong Kong SAR Security Bureau, “Relevant Overseas Legislation”, <https://www.sb.gov.hk/eng/bl23/relevant.html>, (accessed 6 Feb 2024).

<sup>60</sup> For example, the HRC in its 2015 concluding observations on the seventh periodic review of the United Kingdom raised concern with provisions under the UK’s terrorism legislation and on the use of national security in the administration of justice and fair trials. HRC, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, paras. 14-5, 22.

<sup>61</sup> Amnesty International, *The National Security Law Curtailing Freedom of Expression and Association in the Name of Security in the Republic of Korea*, (Index Number: ASA 25/006/2012), 28 November 2012, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa250062012en.pdf>

- Prohibiting sabotage endangering national security and related activities (pp. 64-68)
- External interference and organisations engaging in activities endangering national security (pp. 69-79)

Amnesty International is concerned about the vaguely-worded new offences or amended provisions, especially in connection with the present overbroad definition of national security as mentioned above, which if enacted, could criminalize the conduct of those who only exercise their rights to freedom of expression, association and other human rights. Among the above, Amnesty provides further comments on the specific offences listed below.

## TREASON, TREASONABLE OFFENCES, MISPRISION OF TREASON

The offences of “Treason” and “treasonable offences” at present are colonial-era crimes under the Crimes Ordinance, and punishable by life imprisonment.<sup>62</sup> Treason is defined as carrying out or intending to carry out “kill[ing], wound[ing] or caus[ing] bodily harm to Her Majesty” or “levying war” to try and depose “Her Majesty” or force or compel her to “change her measures of counsels”. “Treasonable offences” is the intention to commit certain acts of treason and where an individual “manifests such intention by an overt act or by publishing any printing or writing.”

The proposed revised offence of treason is described in the Consultation Document as targeting amongst other acts: “(a) joining an external armed force that is at war with China; (b) with intent to prejudice the situation of China in a war, assisting an enemy at war with China in a war; (c) levying war against China; (d) instigating a foreign country to invade China with force; or; (e) with intent to endanger the sovereignty, unity or territorial integrity of China, using force or threatening to use force.”<sup>63</sup> The Consultation Document also recommends the use of an expanded definition of “levying war” to include acts that don’t “amount to war” but “involve the use of force or threat to use of force with the intention of endangering national sovereignty, unity or territorial integrity.”<sup>64</sup> The scope of treason is described as covering Chinese citizens inside Hong Kong, and Hong Kong permanent and non-permanent residents who are Chinese citizens and “have committed the ‘offense’ of treason outside of the HKSAR”.<sup>65</sup>

The Consultation Document describes the proposed amended offence of “treasonable offences” as intended to target the following acts: “If a person intends to commit the offence of ‘treason’, and publicly manifests such intention.”<sup>66</sup> The document states that “treasonable offences” encompasses a scenario “even if the person has not committed the act of treason.”<sup>67</sup> The offence would only apply to Chinese nationals.

As proposed in the Consultation Document, the offence of “treason” and “treasonable offences” are defined in too vague and broad a manner to allow for legal certainty. If unrevised, they may allow that expression that might not, or does not in fact, lead to action could be interpreted as falling into the definition of “treasonable offences”.

The Consultation Document also recommends that the proposed Ordinance codify the offence of “misprision of treason”, that is, the deliberate concealment of one’s knowledge of a treasonable act, requiring an individual who “knows that another person has committed, is committing or is about to commit the offence of ‘treason’ to disclose the commission of offence to a police officer as soon as reasonably practicable, unless the commission of offence has been in the public domain”.<sup>68</sup> Given the extreme vagueness of the offence of treason, an additional offence of “misprision” could enlarge the scope of application and be open to abuse.

<sup>62</sup> Hong Kong SAR, Crimes Ordinance, 1971 amended 2021, [https://www.elegislation.gov.hk/hk/cap200?xpid=ID\\_1438402821257\\_002](https://www.elegislation.gov.hk/hk/cap200?xpid=ID_1438402821257_002), Part 1 – Treason: Section 2-3.

<sup>63</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.3.

<sup>64</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.3.

<sup>65</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.4.

<sup>66</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.9.

<sup>67</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.8.

<sup>68</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 3.6.

Amnesty International is seriously concerned at the proposal that the Ordinance introduce the offence of “misprision of treason”. This surpasses the requirements of the Basic Law and runs counter to prior government commitments.<sup>69</sup> The fact that the Hong Kong government wishes to revive the almost forgotten and archaic offence of “misprision of treason” could have far-reaching consequences on society, with the potential to lead to an assumed duty to spy on other residents.

**Amnesty International believes that, as currently defined, “treasonable offences” and “misprision of treason” should not be included in the draft Safeguarding National Security Ordinance.**

## ACTS WITH SEDITIOUS INTENT

The current offence of acting, speaking, publishing or conspiring “with seditious intention” under the Crimes Ordinance is a colonial-era law that prohibits speech, publications and other acts that “bring into hatred or contempt or to excite disaffection against” or “promote feelings of ill-will and enmity” towards “Her Majesty” or the government of Hong Kong.<sup>70</sup> Under the Crimes Ordinance, “an act, speech or publication is not seditious” if it meets four criteria including if it intended to show that the government had been “misled or mistaken” and to “point out errors or defects in the government or constitution of Hong Kong...with a view to the remedying of such errors or defects”.<sup>71</sup>

Sedition is a crime of speaking words against the state and has long been used as a tool to suppress dissent and imprison dissidents and others for peacefully exercising their rights to freedom of expression and association. It has origins from the 1600s in England and was used to suppress dissent in the former British colonies.<sup>72</sup> The offence derived from the once prevalent view that rulers were superior beings exercising a divine mandate and beyond reproach of the common people.

Sedition laws around the world have been challenged and repealed in numerous countries due to their vague and overly broad character that has commonly been used to crack down on critical voices and to bring politically motivated prosecutions against political activists, human rights defenders, journalists, authors, artists, academics, students and others.<sup>73</sup> International human rights mechanisms have raised concerns regarding the use of sedition laws in violation of the rights to freedom of expression, peaceful assembly and association.<sup>74</sup>

The crime has been removed from the legislation in many countries, including the United Kingdom<sup>75</sup> itself and the former British colonies/Commonwealth countries of Ghana,<sup>76</sup> Ireland,<sup>77</sup> Kenya,<sup>78</sup> New Zealand,<sup>79</sup>

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<sup>69</sup> Legislative Council, “Press Release: Government further clarifies legislative proposals to implement BL 23”, LC Paper No. CB(2)1069/02-03(02), 28 January 2003, <https://www.legco.gov.hk/yr02-03/english/panels/se/papers/ajlssecb2-1069-2e-scan.pdf>.

<sup>70</sup> Hong Kong, Crimes Ordinance, (previously cited), Section 9 (1).

<sup>71</sup> Hong Kong, Crimes Ordinance, (previously cited), Section 9(2).

<sup>72</sup> Clooney Foundation for Justice, *The Crime of Sedition: At the Crossroads of Reform and Resurgence*, April 2022, <https://hri.law.columbia.edu/sites/default/files/publications/sedition-report-april-2022.pdf>, p. 2.

<sup>73</sup> UN Special Rapporteur on Freedom of Opinion and Freedom of Expression, Report to the General Assembly, 6 September 2016, UN Doc No. A/71/373, para. 31. In the last two years, Amnesty International raised concerns regarding the use of sedition laws in at least eight countries, i.e., Bolivia, China (Hong Kong), Eswatini, Fiji, Malaysia, Pakistan, Thailand, Zambia. Amnesty International, *Report 2022/2023 The State of the World’s Human Rights*, (Index: POL 10/5670/2023), 27 March 2023, <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>; Amnesty International, *Report 2021/2022 The State of the World’s Human Rights*, (Index: POL: 10/4870/2022), 29 March 2022.

<sup>74</sup> In addition to observations by the HRC on the situation in Hong Kong, see also for example the UN Special Rapporteur on Freedom of Opinion and Freedom of Expression has also raised concerns regarding the penalization by law of “seditious words” or “tendencies” to curb dissenting opinions in countries such as Malaysia (A/HRC/32/43, case no. MYS 3/2015), Swaziland (A/HRC/30/27, case no. SWZ 2/2015), or Jordan (A/HRC/32/43, case no. JOR 1/2016).

<sup>75</sup> Repealed in 2009. UK Parliament, Coroners and Justice Act 2009, <https://www.legislation.gov.uk/ukpga/2009/25/section/73>.

<sup>76</sup> Repealed in 2001. West African Journalists Association (WAJA), “Criminal libel law repealed”, 31 July 2001, <https://ifex.org/criminal-libel-law-repealed/>.

<sup>77</sup> Repealed in 2018. Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018, <https://www.irishstatutebook.ie/eli/2018/ca/37/enacted/en/html>.

<sup>78</sup> Repealed in 1997. Human Rights Watch, *Kenya’s Unfinished Democracy: A Human Rights Agenda for the New Government*, Vol. 14, No. 10 (A), December 2002, <https://www.hrw.org/reports/2002/kenya2/Kenya1202-02.htm>, p. 6.

<sup>79</sup> Repealed in 2007. New Zealand Parliament, Crimes (Repeal of Seditious Offences) Amendment Act 2007, <https://www.legislation.govt.nz/act/public/2007/0096/latest/whole.html>.

the Maldives,<sup>80</sup> Malawi,<sup>81</sup> Singapore,<sup>82</sup> Sierra Leone<sup>83</sup> and Uganda<sup>84</sup> and made inactive or substantially limited in Australia<sup>85</sup> and Canada<sup>86</sup>.

High judicial authorities in Common Law countries likewise have been critical of this offence. In 2023, the High Court of Lahore, in Pakistan, struck down sedition laws emphasizing that sedition was “enacted to perpetrate and entrench British colonial rule in the sub-continent”.<sup>87</sup> In May 2022, the Supreme Court of India suspended the enforcement of Section 124A of the Indian Penal Code that punishes sedition until the government re-examines it and ordered the authorities to put on hold all pending trials, appeals and proceedings.<sup>88</sup> In 2019, the East African Court of Justice ruled that sedition laws in Tanzania were against the Treaty for the Establishment of the East African Community as they lacked legal clarity and thus “makes it all but impossible, for a journalist or other individual, to predict and thus plan their actions”.<sup>89</sup> In February 2018, the Court of Justice of the Economic Community of West African States (ECOWAS) had already issued a landmark judgment that found most Gambian media laws violated the right to freedom of expression and asked the government to repeal or amend, among others, criminal laws on sedition in line with Gambia’s obligations under international human rights law.<sup>90</sup>

Outside of the Common Law legal tradition, Spain repealed its sedition laws in 2022.<sup>91</sup> And in April 2018, the Inter-American Commission on Human Rights found that the Cuban authorities violated the rights to freedom of expression and association of four activists who had been convicted for sedition on the basis of a vaguely defined crime of sedition that prevented them from identifying the specific punishable conduct.<sup>92</sup> It is therefore clear that international legal opinion, not only but especially in jurisdictions with a heritage of British legal principles, is increasingly against such a crime, especially when it is vaguely defined and hence too uncertain in its application, in violation of the principle of legality.<sup>93</sup>

Additionally, the UN Human Rights Committee has stated, in order to comply with Article 19 of the ICCPR, that states must ensure sedition laws “are crafted and applied in a manner that conforms to the strict requirements of paragraph 3.”<sup>94</sup> The Committee said that it is not compatible with paragraph 3 “to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not

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<sup>80</sup> Repealed in 2018. President’s Office Republic of Maldives, “President ratifies the bill to repeal the Defamation and Freedom of Speech Act” 22 November 2018, <https://presidency.gov.mv/Press/Article/19826>.

<sup>81</sup> Repealed in 2022. Media Institute of Southern Africa (MISA), “Members of Parliament in Malawi remove sedition as criminal offence”, 22 November 2022, <https://malawi.misa.org/2022/11/22/members-of-parliament-in-malawi-remove-sedition-as-criminal-offence/>

<sup>82</sup> Repealed in 2021. Ministry of Home Affairs Singapore, “Commencement of the Sedition (Repeal) Act 2021”, 1 November 2022, <https://www.mha.gov.sg/mediaroom/press-releases/commencement-of-the-sedition-repeal-act-2021/>.

<sup>83</sup> Repealed in 2020. Media Foundation for West Africa (MFWA), “Major Boost for Press Freedom as Sierra Leone Scraps Criminal Libel Law after 55 Years”, 24 July 2020, <https://www.mfwa.org/major-boost-for-press-freedom-as-sierra-leone-scraps-criminal-libel-law-after-55-years>

<sup>84</sup> Repealed in 2023. Amendment of Penal Code Act Cap. 120 Law Revision (Miscellaneous Amendments) Act, 2023, [https://www.parliament.go.ug/sites/default/files/The\\_Law\\_Revision\\_Act\\_2023\\_compressed.pdf](https://www.parliament.go.ug/sites/default/files/The_Law_Revision_Act_2023_compressed.pdf), pg. 30-1.

<sup>85</sup> Amended in 2010 to replace “sedition” with “urging violence”. National Security Legislation Amendment Act 2010 (Cth), <https://www.alrc.gov.au/inquiry/sedition/>.

<sup>86</sup> Inactive since 1950 Supreme Court ruling. Supreme Court of Canada, *Boucher v. the King*, [1951] S.C.R. 265, 18 December 1950, <https://www.canlii.org/en/ca/scc/doc/1950/1950canlii2/1950canlii2.html>.

<sup>87</sup> Lahore High Court, *Haroon Farooq v. Federation of Pakistan & others*, W.P No.59599 of 2022, 30 March 2023.

<sup>88</sup> Amnesty International, “India: Supreme Court’s temporary suspension of sedition law a welcome step” 11 May 2022,

<https://www.amnesty.org/en/latest/news/2022/05/india-supreme-courts-temporary-suspension-of-sedition-law-a-welcome-step/>.

This followed multiple rulings of the Supreme Court that stated that a speech would amount to sedition only if it involved incitement to violence or public disorder. Specifically, in 2015 the court stated: “Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of [freedom of expression].” The law had been enacted during the British era more than 150 years ago to stifle dissent during India’s independence struggle.

<sup>89</sup> East African Court of Justice, *Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania*, EACJ Reference No. 2 of 2017, 29 March 2019, para. 99.

<sup>90</sup> Court of Justice of the Economic Community of West African States (ECOWAS), *Federation of African Journalists (FAJ) v. The Gambia*, Case no. ECW/CCJ/APP/36/15, 13 February 2018.

<sup>91</sup> Ley Orgánica 14/2022, 22 December 2022 (BOE No 307 of 23 December 2022, p. 1).

<sup>92</sup> Organization of American States (OAS), Report 27/18, Case 12127, OAS Doc No. OEA/Ser.L/V/II.167, 24 February 2018, <https://www.oas.org/es/cidh/decisiones/2018/CUPU12127ES.pdf>, paras 91 and 98

<sup>93</sup> See, for example, Articles 19, 21 and 22 of the ICCPR (“prescribed by law”); Siracusa Principles (previously cited), paras 16 and 17.

<sup>94</sup> Article 19 of the ICCPR states “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”<sup>95</sup>

Since 2020, the Hong Kong government began to apply the sedition laws in criminal cases against individuals who exercised their right to freedom of expression. No one had been prosecuted under these laws since 1967 and the recent prosecutions are the first time the offence has been used since the ICCPR came into effect in Hong Kong. For example, in December 2021, executives and board members of the defunct media outlet Stand News were arrested for “seditious publications” and put on trial in October 2022.<sup>96</sup> In April 2022, a radio host and political activist received a 40-month prison sentence after being convicted of sedition for chanting slogans.<sup>97</sup> The same month, national security police arrested six people on sedition charges because they “caused nuisance” during a court hearing, and subsequently convicted two of them for sedition for clapping and chanting slogans in court.<sup>98</sup> In September 2022, five speech therapists were convicted for conspiring to publish “seditious materials” after publishing a series of children’s books.<sup>99</sup> Police arrested two men in March 2023 for possession of ‘seditious’ materials for possessing these books.<sup>100</sup>

In 2022, the UN Human Rights Committee recommended the Hong Kong government, in order to comply with its obligations under the ICCPR, repeal the sedition provisions under the Crimes Ordinance and refrain from using them to suppress the expression of critical and dissenting opinions.<sup>101</sup>

The proposed revision of acts, speech, and publications with seditious intentions, while removing colonial language referencing the British monarch, retains the thrust of the offence and the CD states it “can cover the following intentions”: “hatred or contempt against, or to induce his disaffection against...the fundamental system of the State established by the Constitution; a State institution under the Constitution; or a CPG [Central People’s Government] office in Hong Kong”; or against “the constitutional order, executive, legislative or judicial authority of the HKSAR”; “incite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter established in accordance with the law in the HKSAR”; “induce hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China”; the “intention to incite any other person to do a violent act in the HKSAR”; “the intention to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR”.<sup>102</sup>

While the Consultation Document seeks to retain section 9(2) of the Crimes Ordinance on acts, words, or publications which do not have seditious intent,<sup>103</sup> Amnesty notes that the existing limitations as currently enacted have not protected individuals from prosecution in violation of the right to freedom of expression.

Amnesty International is concerned that the Hong Kong government did not take the opportunity to remove the colonial-era offence of sedition from Hong Kong’s legislation, as has happened in many comparable jurisdictions, and instead is planning to further entrench sedition in the proposed Ordinance, especially in light of the recommendation from the UN Human Rights Committee that the current sedition legislation is in

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<sup>95</sup> The Committee has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike, was not permissible on the grounds of national security. HRC, General comment 34: Freedoms of opinion and expression (Article 19), 12 September 2011, CCPR/C/GC/34, para. 30.

<sup>96</sup> Amnesty International, “Hong Kong: Downward spiral for press freedom continues after arrests”, 29 December 2021, <https://www.amnesty.org/en/latest/news/2021/12/hong-kong-downward-spiral-for-press-freedom-continues-after-arrests/>; Associated Press, “Sedition trial begins for closed Hong Kong news site editors”, 31 October 2022, <https://apnews.com/article/asia-hong-kong-newspapers-government-and-politics-4076d4c4810fae4cb411bf2a2115aff8>.

<sup>97</sup> Amnesty International, Twitter post: “The 3-year+ sentence handed to Tam Tak-chi for uttering ‘seditious words’ during peaceful protests is the latest damning example of the Hong Kong government’s relentless repression of human rights.”, 20 April 2022, <https://twitter.com/amnesty/status/1516844041811472392>.

<sup>98</sup> Amnesty International, “Hong Kong: ‘Sedition’ arrests after clapping in court a new low for human rights”, 6 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/hong-kong-sedition-arrests-after-clapping-in-court-a-new-low-for-human-rights/>; Associated Press, “Hong Kongers who clapped in court jailed on sedition charges”, 27 October 2022, <https://apnews.com/article/hong-kong-government-and-politics-5268cf581cd78da5bd8d766d5c249c05>.

<sup>99</sup> Amnesty International, “Hong Kong: Conviction of children’s book publishers an absurd example of unrelenting repression”, 7 September 2022, <https://www.amnesty.org/en/latest/news/2022/09/hong-kong-conviction-of-childrens-book-publishers-an-absurd-example-of-unrelenting-repression/>.

<sup>100</sup> Amnesty International, “Hong Kong: Arrests for possession of ‘seditious’ children’s books a new low for human rights”, 17 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/hong-kong-arrests-for-possession-of-seditious-childrens-books-a-new-low-for-human-rights/>.

<sup>101</sup> HRC, Concluding observations: Hong Kong, China (previously cited), para. 16(a).

<sup>102</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 4.8.

<sup>103</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), pp. 41-2.



violation of the government's obligations under articles 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25 of the ICCPR.<sup>104</sup>

Given the serious concerns Amnesty International has outlined above regarding the offence of sedition, it is also of particular concern that the Consultation Document proposes to increase the penalties for the offence of "seditious intention" and "possession of seditious publication", but does not provide the proposed penalty itself.<sup>105</sup> "Seditious intention" currently carries a maximum sentence of two years in prison for the first conviction, and three years for subsequent convictions; and "possession of seditious publications" carries one year in prison for the first conviction or two years on a subsequent conviction.

**Amnesty International urges the government to adhere to its obligations under the ICCPR and implement the recommendations of the Human Rights Committee by repealing the offence of sedition in the Crimes Ordinance and remove the offence from the proposed Safeguarding National Security Ordinance.**

## INSURRECTION

The Consultation Document proposes the introduction of a new offence of "insurrection" to be defined as "(a) joining or being a part of an armed force that is in an armed conflict with the armed forces of the People's Republic of China; (b) with intent to prejudice the situation of the armed forces of the People's Republic of China in an armed conflict, assisting an armed force that is in an armed conflict with the armed forces of the People's Republic of China; (c) with intent to endanger the sovereignty, unity or territorial integrity of the People's Republic of China or the public safety of the HKSAR as a whole (or being reckless as to whether the above would be endangered), doing a violent act in the HKSAR."<sup>106</sup>

The Consultation Document states that the offence of "insurrection" was developed in response to the protests of 2019, which it described as "large-scale violence that occurred during the 'black-clad violence' in 2019" but that a new offence was required because the existing crime of "riots" "fails to adequately reflect, both in terms of criminality or the level of penalty, the nature of such violence in endangering national security".<sup>107</sup>

Under the Public Order Ordinance, the offence of "rioting" already carries a maximum sentence of 10 years' imprisonment, and the Crimes Ordinance proscribes criminal damage to property in a way that carries a possible life sentence.<sup>108</sup>

Amnesty International also notes that starting in March 2019, in response to proposed legislation from the Hong Kong government, a series of protests began including three mass peaceful protests on 9 June, 16 June and 18 August, each attracting an estimated 1–2 million participants. Protests became more frequent and larger in 2019 as the government refused to respond to the protesters' demands. The Hong Kong police gradually adopted a tougher approach to restricting public assemblies.<sup>109</sup> While the vast majority of protesters were peaceful, as the year went on there was violence, which appears to have been fueled in large part by the use of unnecessary, reckless and excessive force by the police and the persistent impunity of such behaviour.<sup>110</sup> Since 2019 the police have effectively adopted a zero-tolerance approach for disruptions caused by protesters when policing assemblies. Between June 2019 and January 2021 Amnesty International documented an alarming pattern of reckless and indiscriminate tactics being employed by the Hong Kong Police Force to control crowds.<sup>111</sup>

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<sup>104</sup> HRC, Concluding observations: Hong Kong, China (previously cited), para. 15.

<sup>105</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), p. 42

<sup>106</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 4.9.

<sup>107</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 4.2.

<sup>108</sup> Hong Kong Public Order Ordinance, 1967 amended 2019, [https://www.elegislation.gov.hk/hk/cap245?xid=ID\\_1438402885841\\_001](https://www.elegislation.gov.hk/hk/cap245?xid=ID_1438402885841_001), Section 19 – Riot; Hong Kong, Crimes Ordinance (previously cited), Part VIII Criminal Damage to Property.

<sup>109</sup> Amnesty International, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* (previously cited), pp. 13-14.

<sup>110</sup> Amnesty International, "Hong Kong: Lack of accountability for police violence could fuel unrest", 5 March 2020, <https://www.amnesty.org/en/latest/news/2020/03/hong-kong-lack-accountability-police-violence-fuel-unrest/>; Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019), 21 June 2019, <https://www.amnesty.org/en/documents/asa17/0576/2019/en/>.

<sup>111</sup> Amnesty International, *How not to police a protest* (previously cited); Amnesty International, "Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed", 19 September 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>.

The UN Human Rights Committee noted that the government in 2019 “labelled entire assemblies as violent because of isolated cases of violence by some protestors, and consequently treats protestors as rioters”. The Committee recommended the government “take all the measures necessary to respect and ensure the right of peaceful assembly.”<sup>112</sup> The Human Rights Committee has stated that under Article 21 of the ICCPR, “isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such.”<sup>113</sup>

Amnesty International is concerned that a vague new offence is being introduced when existing legislation already proscribes violent conduct and rioting and that this legislation is designed to encompass activity that is protected under the ICCPR. Amnesty is worried that charges of “insurrection” could be levied against individuals who attend an assembly where some others engage in isolated “violent acts”.

**Amnesty International considers that there should be no new offence of insurrection included in the proposed Safeguarding National Security Ordinance.**

## STATE SECRETS

The Consultation Document proposes the following definition of state secrets: “If any of the following secrets, the disclosure of which without lawful authority would likely endanger national security, the secret amounts to a state secret: (a) secrets concerning major policy decisions on affairs of our country or the HKSAR; (b) secrets concerning the construction of national defence or armed forces; (c) secrets concerning diplomatic or foreign affair activities of our country, or secrets concerning external affairs of the HKSAR, or secrets that our country or the HKSAR is under an external obligation to preserve secrecy; (d) secrets concerning the economic and social development of our country or the HKSAR; (e) secrets concerning the technological development or scientific technology of our country or the HKSAR; (f) secrets concerning activities for safeguarding national security or the security of the HKSAR, or for the investigation of offences; or (g) secrets concerning the relationship between the Central Authorities and the HKSAR.”<sup>114</sup> The definition is nearly identical to the definition on the Law of the People’s Republic of China on Guarding State Secrets.<sup>115</sup>

Amnesty International considers the proposal to introduce a definition of “state secrets” based on mainland law to have greatly expanded the term “state secrets” from Article 23 of the Basic Law, and consequently will introduce uncertainty in the proposed offences, if enacted. Amnesty International is also concerned with the borrowing of concepts from mainland China on “protection of the state secrets” since much of the legislation and practice of state security and state secrets in the PRC runs counter to the protection and promotion of human rights, including freedom of expression.<sup>116</sup>

The Committee Against Torture (CAT) has also raised concerns about the PRC law on state secrets since 2008, due to “public security officials constantly refus[ing] lawyers’ access to suspects and notification to their relatives” on the grounds that state secrets may be disclosed and the failure of the government to provide data to the Committee on torture, criminal justice, and other issues.<sup>117</sup> CAT has repeatedly called on China to review the legislation to ensure compliance with the Convention Against Torture and to ensure that the determination as to whether a matter is a state secret should be the object of an appeal before an independent tribunal.<sup>118</sup> Amnesty International has further raised concern about the number of people detained in mainland China for allegedly revealing what are purported to be state secrets - which can include disclosing information in the public interest or already in the public domain, such as news reports of

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<sup>112</sup> HRC, Concluding observations: Hong Kong, China (previously cited), paras. 45-6.

<sup>113</sup> HRC, General comment 37: On the right of peaceful assembly (Article 21), 2020, UN Doc. CCPR/C/GC/37, para. 17

<sup>114</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.8.

<sup>115</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.7; National People’s Congress, “中华人民共和国保守国家秘密法” [Law of the People’s Republic of China on Guarding State Secrets], 2010, [https://www.gov.cn/fifg/2010-04/30/content\\_1596420.htm](https://www.gov.cn/fifg/2010-04/30/content_1596420.htm), Article 9.

<sup>116</sup> Amnesty International, “China: Open letter: Amnesty International comments on the draft revision of the “Measures for Implementing the Law on the Guarding of State Secrets” (Index Number: ASA 17/016/2012), 15 June 2012,

<https://www.amnesty.org/en/documents/asa17/016/2012/en/>; Amnesty International, “China: Open letter: Amnesty International comments on the draft revision of the Law on the Protection of State Secrets”, (Index Number: ASA 17/035/2009), 28 July 2009,

<https://www.amnesty.org/en/documents/asa17/035/2009/en/>; Amnesty International, “People’s Republic of China: State secrets – a pretext for repression” (Index Number: ASA 17/042/1996), 13 May 1996, <https://www.amnesty.org/en/documents/asa17/042/1996/en/>.

<sup>117</sup> CAT, Concluding observations on the fifth periodic report of China, 3 February 2016, UN Doc. CAT/C/CHN/CO/5, paras. 12-3, 30-1.

<sup>118</sup> CAT, Concluding observations on the fourth periodic report of China, 12 December 2008, UN Doc. CAT/C/CHN/CO/4, para. 15-16; CAT, Concluding observations on the fifth periodic report of China (previously cited), paras. 30-1.

demonstrations or information on detained human rights defenders, a Communist Party ideological paper, or even statistics on the death penalty.<sup>119</sup>

The proposed scope of “state secrets” in the Consultation Document includes areas such as “economic and social development” and “technological development or scientific technology”, which are so broad that theoretically any information relating to how a society functions can fall into one of these categories.<sup>120</sup> The clause that such information would only constitute a “state secret” if “disclosure of the information without lawful authority would likely endanger national security”<sup>121</sup> does not go far enough to ensure adequate safeguards, as “national security” itself is defined without legal clarity and predictability.

Such a broad scope of information that may fall under “state secrets”, as per the proposal in the Consultation Document, means that if enacted, it would have a chilling effect on Hong Kong society at large, and particularly journalists, scholars, researchers, or anyone else seeking information. It might potentially deter whistle-blowers who uncover corruption and human rights violations by government agencies with sharing such information with the media in the public interest.

Such over-secrecy constitutes a violation of Article 19 of the ICCPR, which safeguards the right to freedom of expression. The UN Human Rights Committee has provided that “it is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information. Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.”<sup>122</sup>

The Global Principles on National Security and the Right to Information (Tshwane Principles) were drafted to provide guidance to authorities drafting, revising or implementing laws or provisions relating to withholding information on national security grounds or to punish the disclosure of such information. The principles strike a balance between legitimate government actions and the right to information, and state that “it is not sufficient for a public authority simply to assert that there is a risk of harm; the authority is under a duty to provide specific, substantive reasons to support its assertions”.<sup>123</sup>

**Amnesty International urges the government to ensure that the proposed Ordinance does not contain a definition of “state secrets” adopted from PRC law; and that to the extent it includes the offence of “unlawful disclosure”, that the term be defined in full compliance with international human rights standards.**

**Amnesty International further urges the government to ensure that any provision on state secrets in the proposed Ordinance provide for an independent process to review and appeal decisions to classify a matter as a state secret and its classification level; and to adopt safeguards that clarify that no individual would be punished if the disclosure of information relates to human rights abuses, or where it does not actually harm or is not likely to harm a legitimate national security interest, or when the public interest in knowing the information outweighs the harm from disclosure.**

## ESPIONAGE

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<sup>119</sup> Amnesty International, “China: Human rights defender sentenced to 12 years: Huang Qi”, (Index Number: ASA 17/0838/2019), 2 August 2019, <https://www.amnesty.org/en/documents/asa17/0838/2019/en/>; Amnesty International, “China: Detention of journalist for leaking state secrets a ‘smokescreen’”, 8 May 2014, <https://www.amnesty.org/en/latest/news/2014/05/china-detention-journalist-leaking-state-secrets-smokescreen-2/>; Amnesty International, “Death Penalty: World’s biggest executioner China must come clean about ‘grotesque’ level of capital punishment”, 11 April 2017, <https://www.amnesty.org/en/latest/news/2017/04/china-must-come-clean-about-capital-punishment/>.

<sup>120</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.8.

<sup>121</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.9.

<sup>122</sup> HRC, General Comment 34 (previously cited), para. 30.

<sup>123</sup> The Global Principles on National Security and the Right to Information (Tshwane Principles), 12 June 2013, <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf>, Principle 4(c).

The offence of “espionage” is currently proscribed under the Official Secrets Ordinance.<sup>124</sup> The Consultation Document suggests amending the offence of “espionage” to cover a new type of activity, namely “collusion with external forces”.<sup>125</sup> According to the Consultation Document, “external forces” is a broad term that would encompass “any government of a foreign country, authority of a region or place of an external territory, external political organisation, etc. (including a government, authority or political organisation of a country etc. with which it is not in a state of war), as well as its associated entities and individuals.”<sup>126</sup> According to the CD, the proposed offence of “colluding with external forces” would target “Colluding with an external force to publish a statement of fact that is false or misleading to the public, and the person, with intent to engender national security or being reckless as to whether national security would be endangered, so publishes the statement; and knows that the statement is false or misleading.”<sup>127</sup> The CD also proposes introducing a new offence of “participating in or supporting external intelligence organisations or receiving advantages from external intelligence organisations.”<sup>128</sup> The CD does not list or define “external intelligence organisation”.

The “necessity” for such an offence, as described in the Consultation Document, creates concern that the intention of the offence is to target the exercise of the freedoms of expression and association that peacefully promote ideas not favourably received by the government. The CD describes “external political organisation” in Chapter 7 as including non-governmental organisations (NGOs) and described the 2019 protests as a “colour revolution”.<sup>129</sup> The CD goes on to claim that “local organisations and individuals that were willing to act as agents of external political or intelligence organisations and engaged in acts and activities endangering national security, especially acts of espionage” though no evidence or examples of acts were provided in the CD to support these assertions.<sup>130</sup>

Amnesty International is concerned that the overbroad definition of “external forces” and stated “necessity” in the CD would likely conflate the legitimate cooperation and exchange of information of Hong Kong residents and associations with intergovernmental organisations, foreign NGOs, academics, or other individuals or organisations as “espionage” or an offence involving “external intelligence organisations”. Amnesty is also concerned that there is uncertain overlap between the proposed espionage act of “collusion with external forces”, the NSL crime of “collusion with a foreign country or with external elements to endanger national security”<sup>131</sup>, and the proposed offence of “external interference” (cited later in this submission).

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that domestic and foreign NGOs should be allowed to openly cooperate, including through funding and resources, and “without prior authorization.”<sup>132</sup>

**Amnesty International urges the government to ensure that any definition of “espionage” or regarding “external intelligence organisations” in the proposed Ordinance is narrowly defined so as not to be used to deter Hong Kong residents and civil society from legitimately engaging and collaborating with the international community, including on issues in the public interests like academic exchanges, and on political, social, cultural and human rights issues.**

## EXTERNAL INFERENCE AND ORGANIZATIONS

Article 23 of the Basic Law requires Hong Kong to enact laws to “prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies.” The NSL proscribes

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<sup>124</sup> Hong Kong Official Secrets Ordinance, 2020, <https://www.elegislation.gov.hk/hk/cap521>, Part 2 – Espionage.

<sup>125</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.19.

<sup>126</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.19.

<sup>127</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.20(b).

<sup>128</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 5.22.

<sup>129</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.2, p.16.

<sup>130</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), p.16.

<sup>131</sup> Law of Safeguarding National Security in the Hong Kong SAR (previously cited), 2020, Article 29 and 30.

<sup>132</sup> Special Rapporteur on the rights to freedom of peaceful assembly and of association, “Statement to the 20th session of the Human Rights Council Agenda item 3”, 20 June 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12349&LangID=E>.

“collusion with a foreign country or with external elements to endanger national security”<sup>133</sup> and the Societies Ordinance permits the Secretary for Security to make an order prohibiting the operation or continued operation of the society if the “society is a political body that has a connection with a foreign political organisation or a political organisation of Taiwan” or they reasonably believe it “is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others”.<sup>134</sup>

In 2022, the UN Human Rights Committee raised concern with the “excessive powers of the police, provided for in the Societies Ordinance, to refuse or cancel the registration of a society or to prohibit a society, and that such refusal or cancellation is not subject to judicial review on the merits.”<sup>135</sup> It recommended the Hong Kong government: “Review the Societies Ordinance and other relevant legislation in order to remove the procedural and substantive obstacles to registering and running a society and to bring them into line with article 22 of the Covenant.”

While the Consultation Document acknowledges that there may be a “legitimate need” for foreign institutions, organizations and individuals to express their views or lobby on Hong Kong government laws, policies and practices, the CD imposes vague conditions, including that such lobbying be “conducted by lawful and proper means”.<sup>136</sup>

The Consultation Document goes beyond the requirements of Article 23 of the Basic Law and in opposition to the recommendations of the UN Human Rights Committee and proposes a new offence of “external interference”. The CD proposes the new “external interference” offence target acts: “(a) With intent to bring about an interference effect as follows, collaborating with an external force to engage in a conduct, and using improper means when engaging in the conduct – (i) influencing the Central People’s government or the executive authorities of the HKSAR in the formulation or execution of any policy or measure, or the making or execution of any other decision; (ii) interfering with election(s) of the HKSAR; (iii) influencing the Legislative Council in discharging functions; (iv) influencing a court in discharging functions; or (v) prejudicing the relationship between the Central Authorities and HKSAR, or the relationship between China or the HKSAR and any foreign country”.<sup>137</sup> It defines “Collaborating with an external force” in a broad manner, including encompassing “engaging in the conduct in cooperation with an external force”, and “using improper means” is equally defined in a broad manner, including “the conduct constituting an offence”.<sup>138</sup>

Amnesty International is concerned that if such an offense is included in the proposed Ordinance and enacted into law, it could have the effect of criminalizing any conduct or activity that involves the interaction between a Hong Kong resident or association and an individual overseas to engage in activities common to civil society in advocating for or influencing policy decisions.<sup>139</sup> The inherently vague provisions included in the Consultation Document, that foreign organization activities “must not pose any national security risks”, does not allow individuals or organizations to predict what behaviour and activity will run foul of the law. The CD also appears to portray legitimate criticism of government policies made by Hong Kong permanent residents inside and outside the city, and the operations of civil society organizations inside Hong Kong, as being tied to “external forces” or of being “shadow organisations formed outside of the HKSAR”.<sup>140</sup>

The Consultation Document proposes amending the existing “mechanism for regulation of organisations” that would go beyond the existing Societies Ordinance, to include various forms of organizations that are not normally listed and regulated as “societies”, including companies, co-operative societies, incorporated management committee, such as those related to schools or incorporated owners, and corporations.<sup>141</sup> It also grants additional powers to the Secretary for Security to ban any local organization, not just those defined under the Societies Ordinance, if they “reasonably believe[s]” such a proscription necessary for

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<sup>133</sup> Law of Safeguarding National Security in the Hong Kong SAR (previously cited), 2020, Article 29 and 30.

<sup>134</sup> Hong Kong Societies Ordinance, 1911 amended 2022, <https://www.elegislation.gov.hk/hk/cap151>, Section 8 - Prohibition of operation of societies.

<sup>135</sup> HRC, Concluding observations: Hong Kong, China (previously cited), paras. 49-50.

<sup>136</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.3.

<sup>137</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.6(a).

<sup>138</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), paras. 7.6(b)-7.6(c).

<sup>139</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.6.

<sup>140</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.3.

<sup>141</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.14.

<sup>141</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), p. 75.

safeguarding national security.<sup>142</sup> The Consultation Document also proposes to empower the Hong Kong government to prevent any resident of Hong Kong from conducting “activities” with “Prohibit[ed] external organisations endangering national security which are affiliated with the HKSAR from operating in the HKSAR”.<sup>143</sup>

Amnesty International is concerned that if such offences and amendments are enacted into law, the effect of the restrictions would have a chilling effect on the right to freedom of association, and runs counter to the recommendation of the UN Human Rights Committee that the government “[refrain] from taking any action that is likely to curb the exercise of the freedom of association and ensure a safe environment for the activities of civil society organizations.”<sup>144</sup> As set out above the definition of national security that would be applied is extraordinarily broad.

**Amnesty International urges the Hong Kong government to ensure there is no offence of “external interference” in the proposed Ordinance; and in line with the recommendations of the UN Human Rights Committee, review the Societies Ordinance to remove procedural and substantive obstacles to registering and running a society.**

## CONCERNS ABOUT CHANGES TO LEGAL SYSTEM AND ENFORCEMENT MECHANISMS

The Consultation Document is extremely vague on what the proposed Ordinance will seek to legislate regarding changes to procedural mechanisms for individuals suspected of national security crimes. It uses language like “we may consider introducing” new measures or offences and “consideration maybe given to whether similar provisions should be introduced”, a level of vagueness that even goes beyond that in other chapters in the Document.<sup>145</sup> Based on the Consultation Document, it appears the new Ordinance may introduce some of the following changes to the legal system and enforcement mechanisms.

### DETENTION WITHOUT CHARGE, BAIL, AND ACCESS TO LEGAL COUNSEL

Amnesty is alarmed that, while no specific provisions have been proposed, the Consultation Document has suggested that authorities are considering removing important fair trial safeguards and that such proposals, if enacted, would violate the rights to liberty and security of person, presumption of bail, and to a lawyer. The proposals suggested by the CD include permitting extension of the period of police detention without charge, beyond the customary 48 hours; prohibition of bail to suspects accused of national security crimes; and delaying or denying a detained person’s consultation with a solicitor.<sup>146</sup>

Under Article 9(1) of the ICCPR, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. Sections 9(2) and 9(3) state that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him, and that anyone arrested or detained on a criminal charge shall be brought promptly before a

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<sup>142</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.10(a).

<sup>143</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), para. 7.11.

<sup>144</sup> HRC, Concluding observations: Hong Kong, China (previously cited), paras. 50(a).

<sup>145</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), paras. 9.13, 9.22, 9.25.

<sup>146</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), pp. 88-91.

judge or other officer authorized by law to exercise judicial power. A major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded.<sup>147</sup>

Article 14(2) of the ICCPR maintains that everyone charged with a criminal offence should have the right to be presumed innocent until proven guilty. This is enshrined in Article 87 of the Basic Law, which states: “Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs.”<sup>148</sup> Article 9(3) of the ICCPR states that pretrial detention should not be a general rule; this means it should only be utilized exceptionally if necessary in the individual case.<sup>149</sup> The presumption of innocence is an essential part of the right to fair trial.<sup>150</sup> The presumption that a person charged with a criminal offence will not be detained pending trial is closely linked to both the presumption of innocence and the right to liberty.<sup>151</sup>

A range of international human rights standards set out a person’s right to access legal assistance during pretrial proceedings, trials and appeals.<sup>152</sup> The right to communicate with counsel also requires the accused is granted prompt access to counsel.<sup>153</sup> The state has the responsibility to ensure that everyone should be represented by counsel of choice or an appointed lawyer who is able to provide advice free from intimidation, hindrance or other improper interference.<sup>154</sup>

## ABSCONDING

Amnesty International is concerned that the government has suggested introducing measures that target alleged offenders who are abroad, and seek to compel their return to Hong Kong, in a manner which if enacted in the proposed Ordinance, may violate their freedom of movement. The Consultation Document suggests the proposed Ordinance may contain measures including to cancel passports of “absconded” persons.<sup>155</sup> The CD states, in justification of the necessity of the legislation, that “lawbreakers have absconded overseas, wantonly colluded with external forces and continued to engage in acts and activities endangering national security” and cites 13 individuals who were subject of arrest warrants issued by the government in 2023 under the NSL while they were residing overseas and in response to activities that were conducted overseas.<sup>156</sup> At least two of the individuals are nationals of the countries where they reside.

Amnesty International raised concern with the issuing of the arrest warrants and cash bounties in 2023 under the NSL as an act of intimidation that threatens the liberty and safety of the activists targeted.<sup>157</sup> The suggestion that the proposed Ordinance may include provisions that may subject individuals exercising their rights to freedom of expression, association and peaceful assembly outside of Hong Kong to measures like the cancellation of their travel documents or to force their return to Hong Kong is of concern.

Cancelling travel documents restricts a person’s freedom of movement, including between foreign countries, as international travel often requires appropriate documents.<sup>158</sup> Article 12(3) of the ICCPR stipulates that no one’s liberty to movement, including to leave one’s own or any other country, should be deprived but only on grounds that are provided for by law and necessary and proportionate for a legitimate aim. As for all

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<sup>147</sup> HRC, General Comment 35: Liberty and security of person (Article 9), 16 December 2014, UN Doc. CCPR/C/GC/35, para. 25.

<sup>148</sup> Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, Article 87.

<sup>149</sup> HRC, General Comment 35 (previously cited), para. 38.

<sup>150</sup> UN Working group on protecting human rights while countering terrorism, *The basic human rights reference guide: Right to fair trial and due process in the context of countering terrorism*, October 2014, <https://www.ohchr.org/sites/default/files/newyork/Documents/FairTrial.pdf>, para. 46.

<sup>151</sup> Amnesty International, *Fair Trial Manual – Section Edition*, (Index: POL 30/002/2014), 9 April 2014, <https://www.amnesty.org/en/documents/pol30/002/2014/en/>, p. 61.

<sup>152</sup> This is provided for in a number of international standards including, Article 17(2)(d) of the International Convention for the Protection of All Persons from Enforced Disappearance; Article 37(d) of the Convention on the Rights of the Child, Principle 1 of the Basic Principles on the Role of Lawyers, Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 3 and Guideline 4 of the UN Principles and Guidelines on access to legal aid in criminal justice systems, See also: Amnesty International, *Fair Trial Manual* (previously cited), p. 43.

<sup>153</sup> HRC, General Comment 32: Right to fair trial (Article 14), 23 August 2007, UN Doc. CCPR/C/GC/32, para. 34.

<sup>154</sup> Amnesty International, *Fair Trial Manual* (previously cited), p. 44.

<sup>155</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), pp. 92-3.

<sup>156</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), paras. 2.7, 9, 14.

<sup>157</sup> Amnesty International, “Hong Kong: Absurd cash bounties on overseas activists designed to sow fear worldwide”, 14 December 2023, <https://www.amnesty.org/en/latest/news/2023/12/hong-kong-absurd-cash-bounties-on-overseas-activists-designed-to-sow-fear-worldwide/>.

<sup>158</sup> HRC, General Comment 27: Freedom of movement (Article 12), 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9, para. 9.

permissible restrictions of human rights, this means they must be exceptional, based on clear and precisely framed legal grounds, and as non-intrusive as possible.<sup>159</sup>

The restriction must also be consistent with the other rights guaranteed in the ICCPR.<sup>160</sup> These include the protections against arbitrary detention, unfair trials, excessive restrictions of the rights to freedom of expression, peaceful assembly or association, and prohibited discrimination on the basis of their political opinion. According to the UN Human Rights Committee: “[L]iberty of movement is an indispensable condition for the free development of a person.”<sup>161</sup>

## LEGAL PROCEEDINGS

Amnesty International is concerned that procedural steps may be eliminated or modified to violate the right to a fair trial. The Consultation Document suggests the proposed Ordinance may have measures to enforce strict timetables and eliminate or modify procedural steps to bring cases to trial in a “timely manner”, stating that “judges should proactively seek ways to bring cases concerning national security to trial expeditiously, consistently with the interests of justice.”<sup>162</sup>

According to international law, a fair trial demands to be brought promptly, but also with adequate time and facilities to prepare the defence.<sup>163</sup> The defence and prosecution must also be treated in a manner that ensures that both parties have an equal opportunity to prepare and present their cases.<sup>164</sup> When an individual is charged, defence lawyers must be given information sufficient and detailed enough to allow preparation of the defence as soon as possible.<sup>165</sup>

Additionally, Amnesty International is concerned that such proposed changes would further undermine the right to a fair trial by empowering judges to modify procedural steps in a manner favourable to the executive, which under Article 44 of the NSL has the power to designate judges at each court level to handle cases including appeals in relation to the National Security Law. The independence and impartiality of tribunals tasked with criminal proceedings, as required by Article 14(1) of the ICCPR, is essential to a fair trial, protects the integrity of the justice system itself, and is a prerequisite of the rule of law. The courts as institutions and each judge must be independent.

## EXTRA-TERRITORIAL APPLICATION OF THE PROPOSED ORDINANCE

The Consultation Document recommends “providing for appropriate extra-territorial effect for the various offences proposed in the legislation to implement Article 23”, but that such determination will happen “upon formulation of the offences” when the government will “examine each of them in detail before determining its scope of application.”<sup>166</sup>

Amnesty International is concerned that the proposal to apply any legislation under Article 23 extra-territorially is aimed in part at seeking to suppress human rights and political activism for human rights in Hong Kong but that takes place outside of the territory of the Hong Kong SAR. The extra-territorial effect of the NSL, the provisions of which were cited by the CD as inspiration of the proposed effect of the proposed Ordinance,<sup>167</sup> is an issue of concern raised by UN Special Procedures.<sup>168</sup> In view of the vagueness of the

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<sup>159</sup> See also the Siracusa Principles (previously cited), paras 8-12, which sets out that: (1) No limitation on a right may be discriminatory; (2) Any limitations must respond to a pressing public or social need, pursue a legitimate aim, and be proportional to that aim; (3) States should use no more restrictive means than are required for the achievement of the purpose of the limitation; (4) The burden of justifying a limitation lies with the state; (5) Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.

<sup>160</sup> HRC, General Comment 27 (previously cited), para. 18.

<sup>161</sup> HRC, General Comment 27 (previously cited), para. 1.

<sup>162</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), pp. 93-4.

<sup>163</sup> Amnesty International, *Fair Trial Manual* (previously cited), p. 74.

<sup>164</sup> HRC, General Comment 32 (previously cited), para. 32.

<sup>165</sup> HRC, General Comment 32 (previously cited), para. 31.

<sup>166</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), paras. 8.6-7.

<sup>167</sup> Hong Kong SAR Security Bureau, Article 23 Legislation Public Consultation Document (previously cited), p. 81.

<sup>168</sup> UN Special Procedures, Information received concerning the implementation of the National Security Legislation (NSL) in the Hong Kong Special Administrative Region (SAR) (previously cited).



proposed legislation, there is a risk that Hong Kong residents or anyone, resident or not, exercising peacefully their right to freedom of expression, association, or peaceful assembly in other countries might be held criminally responsible for it if or when they travel to Hong Kong.

While the Consultation Document appears to rely on the practice of other states in justifying the proposed and current extra-territorial reach of the Ordinance and the NSL, Amnesty reminds the government that the specific conditions of each country with respect to the enactment and enforcement of such laws and the applicable judicial safeguards varies.

Amnesty International is concerned about the proposals for a host of new investigative powers for the police or changes to the legal system or extra-territoriality of the law. In the absence of clear draft provisions, the reflections contained in the Consultation Document raise alarm that the proposed Ordinance could infringe on the rights to liberty (including presumption of bail), to freedom of movement, and to a fair trial, including to a lawyer. Amnesty International is concerned that the if extra-territorial effect is included in the proposed Ordinance, it may act as a further chilling effect to limit the freedoms to expression, association and peaceful assemblies outside of Hong Kong.

**Amnesty International urges the government to ensure that relevant provisions of the proposed Safeguarding National Security Ordinance do not weaken or undermine existing procedural guarantees that protect fair trial rights.**

**Amnesty International urges the government to ensure that there is no extra-territorial clause in the proposed Ordinance.**

## CONCLUSION

Amnesty International believes that the proposals set out in the Consultation Document for the enactment of Article 23 legislation under the Basic Law in many instances are contrary to international human rights laws and standards. Amnesty is concerned that the definition of national security is overbroad, that newly proposed or amended offences lack legal clarity and demonstrated necessity and proportionality, that procedural rights may be weakened, and that if enacted, the legislation could lead to violations of the rights and freedoms of the residents of Hong Kong and others. Many of the Consultation Document proposals are not necessary nor proportionate for a legitimate national security need.

## RECOMMENDATIONS

- **Amnesty International urges the Hong Kong government to halt the current legislative process because it is being conducted in an environment where meaningful public consultation is not possible, the proposals lack legal certainty, demonstrated necessity, or proportionality, and there are not adequate safeguards to ensure compliance with human rights as the process moves forward. In the event that the government nonetheless continues the current legislative process under Article 23 of the Basic Law, Amnesty urges the government to ensure that any new**

legislation will be compatible with international human rights law and standards and human rights obligations under Hong Kong law.

- Amnesty International is calling for a longer, inclusive, effective and more transparent public consultation period, including a White Bill to be presented to and discussed by a fully informed public.
- Amnesty International urges the Hong Kong government to ensure the proposed Ordinance does not contravene the human rights protections within the Basic Law, and that it is subject to full and effective review by local courts.
- Amnesty International urges the Hong Kong government to ensure the proposed Ordinance includes a clear definition of national security that is grounded in the principles of legality, necessity, proportionality and compliance with human rights; that any definition adheres to the Basic Law; and any designation of endangering national security under the Ordinance is subjected to full, effective and independent review by Hong Kong's courts.
- Amnesty urges the Hong Kong government to implement the recommendation of the UN Human Rights Committee to stop applying the National Security Law (NSL) until it has been repealed; and urges the government to ensure that a broad range of civil society representatives are able to take part in a free, open and meaningful public consultations on the proposed Article 23 and other legislations.
- Amnesty International urges the Hong Kong government to ensure that the proposed Ordinance and its enactment strictly adheres to the principle that no criminal law should be retroactively applied in any circumstances.
- Amnesty International believes that, as currently defined, “treasonable offences” and “misprision of treason” should not be included in the draft Safeguarding National Security Ordinance.
- Amnesty International urges the government to adhere to its obligations under the ICCPR and implement the recommendations of the Human Rights Committee by repealing the offence of sedition in the Crimes Ordinance and remove the offence from the proposed Safeguarding National Security Ordinance.
- Amnesty International considers that there should be no new offence of insurrection included in the proposed Safeguarding National Security Ordinance.
- Amnesty International urges the government to ensure that the proposed Ordinance does not contain a definition of “state secrets” adopted from PRC law; and that to the extent it includes the offence of “unlawful disclosure”, that the term be defined in full compliance with international human rights standards.
- Amnesty International further urges the government to ensure that any provision on state secrets in the proposed Ordinance provide for an independent process to review and appeal decisions to classify a matter as a state secret and its classification level; and to adopt safeguards that clarify that no individual would be punished if the disclosure of information relates to human rights abuses, or where it does not actually harm or is not likely to harm a legitimate national security

interest, or when the public interest in knowing the information outweighs the harm from disclosure.

- **Amnesty International urges the government to ensure that any definition of “espionage” or regarding “external intelligence organisations” in the proposed Ordinance is narrowly defined so as not to be used to deter Hong Kong residents and civil society from legitimately engaging and collaborating with the international community, including on issues in the public interests like academic exchanges, and on political, social, cultural and human rights issues.**
- **Amnesty International urges the government to ensure that the proposed Ordinance does not contain any offences related to “sabotage” and “doing an act in relation to a computer or electronic system” until the relevant offences can be clearly defined and presented for public consultation.**
- **Amnesty International urges the Hong Kong government to ensure there is no offence of “external interference” in the proposed Ordinance; and in line with the recommendations of the UN Human Rights Committee, review the Societies Ordinance to remove procedural and substantive obstacles to registering and running a society.**
- **Amnesty International urges the government to ensure that relevant provisions of the proposed Safeguarding National Security Ordinance do not weaken or undermine existing procedural guarantees that protect fair trial rights.**
- **Amnesty International urges the government to ensure that there is no extra-territorial clause in the proposed Ordinance.**

# Annex 1: Select Relevant Reference Materials by Amnesty International<sup>1</sup>

Date	Country	Title	Summary	Law cited by HKG
10/01/2023	UK	<a href="#">Submission on counter-terrorism law, policy and practice in the United Kingdom</a>	Amnesty International submits the following response to the call to evidence by the Independent Commission on UK Counter-Terrorism Law, Policy and Practice. This submission is a select summary of Amnesty International’s work on counter-terrorism concerns in the UK since 2007. The past 15 years have seen the adoption of wave upon wave of new counter-terror legislation, together with the increasing securitisation of life in the UK which continues to negatively affect a wide range of human rights, including the rights to fair trial, liberty, private and family life, non-discrimination and nationality; freedom of movement, association, religion and the principle of non-refoulement.	
13/10/2021	Singapore	<a href="#">Singapore: Withdraw Foreign Interference (Countermeasures) Bill</a>	Amnesty International and nine organizations called on the Government of Singapore to withdraw the Foreign Interference (Countermeasures) Bill ('FICA'). FICA’s provisions contravene international legal and human rights principles – including the rights to freedom of expression, association, participation in public affairs, and privacy – and will further curtail civic space, both online and offline.	Foreign Interference (Countermeasures) Act 2021

<sup>1</sup> Focused on national security legislation in Australia, Canada, New Zealand, Singapore, the United Kingdom, and the United States of America. All countries listed as reference resources for the drafting of the Consultation Document.

11/01/2021	USA	<a href="#">Right the wrong: Decision time on Guantánamo</a>	This report returns to the detention facility at the US naval base in Guantánamo Bay as detentions there enter their 20th year and as a new President prepares to enter the White House and become its fourth incumbent during the lifetime of this prison. But even as administration policy changed from 'locate a detention facility and fill it', to 'review the detentions and close the prison', to 'keep it open and prepare it to receive more detainees', the ghost at the table has been international human rights law – ignored under a 'law of war' framework defended by each administration of the past 19 years.	
01/09/2020	USA	<a href="#">Rolling back of human rights obligations: Amnesty International submission for the UN Universal Periodic Review</a>	In this submission, Amnesty International raises concerns on the persistent human rights violations associated with the US government's national security and counter-terrorism programs, such as the ongoing violations at the Guantánamo Bay Detention Center and attendant military tribunals, lack of accountability for torture and other human rights violations, and the weakened policies related to the protection of civilians in counter-terror operations.	
21/02/2019	Australia	<a href="#">Australia's Crackdown on Civil Society: Keeping Company with Repressive Regimes like Azerbaijan, Belarus, China, Egypt, Hungary, Pakistan and Russia</a>	The National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 imposes criminal penalties for sharing what is broadly defined as "sensitive" information. While the legislation contains certain provisions to protect journalists, it does not contain safeguards to protect whistle-blowers who divulge information about human rights abuses or other information of public interest, nor for other human rights defenders or organisations who may discuss human rights concerns with representatives of foreign governments or international human rights mechanisms.	National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018

01/10/2017	Canada	<a href="#">Human rights promises must be backed by action: Amnesty International submission for the UN Universal Periodic Review – 30th session of the UPR Working Group, May 2018</a>	<p>A national security law reform in 2015 gave rise to serious human rights concerns. The current government has introduced reforms addressing some of these concerns, including effective review and oversight of national security agencies. Nevertheless, other problems persist, including insufficient information-sharing safeguards, inadequate “no fly list” appeal provisions and expanded mass surveillance and data-mining powers. Amnesty International has called on Canada to recognize human rights as a foundational component to the country’s national security framework.</p>	
17/01/2017	UK	<a href="#">Europe: Dangerously disproportionate: The ever-expanding national security state in Europe</a>	<p>This report gives a bird’s eye view of the national security landscape and shows just how widespread and deep the “securitization” of Europe has become. It focuses on eight themes: states of emergency, principle of legality, right to privacy, freedom of expression, right to liberty, freedom of movement, stripping of nationality, and the prohibition on sending people to places where they risk torture.</p>	
19/10/2016	Canada	<a href="#">It is time for a human rights based approach to national security</a>	<p>That means explicit reference to national and international human rights provisions in laws such as the CSIS Act. It means incorporating binding obligations to prohibit discrimination ban torture, ensure fair trials and protect privacy across the full range of Canada’s national security laws. It has to involve expert, independent oversight of national security agencies, in addition to the committee of parliamentarians that has been proposed. There should also be regular reviews of the human rights impact of national security laws. The new threat reduction powers given to CSIS cannot in any way involve human rights violations and no judge should ever be asked to condone or authorize the contrary. The new criminal offence of promoting the commission of terrorism “in general” is vague, undermines free expression, adds nothing to existing laws and should be repealed.</p>	<p>Canadian Security Intelligence Service Act</p>

02/12/2015	Australia	<a href="#">Submission to the Joint Parliamentary Committee on Intelligence and Security Inquiry into the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015</a>	This legislation raises significant questions relating to human rights, statelessness, citizenship, and the limits of executive power. Australia is party to numerous international legal conventions which are applicable to the Bill. The current Bill does not align with Australia's international human rights obligations. Amnesty International has serious concerns regarding the Bill's human rights impact, and we recommend the bill is not passed in its current form.
04/06/2015	Canada	<a href="#">Executive Summary And Recommendations Submission To The United Nations Human Rights Committee</a>	Despite numerous tragic reminders in Canada of the dangers of conducting national security activities without effective oversight, and the growing urgency of strengthening national security review and oversight as national security operations become increasingly integrated, Canada has not responded to the calls for improvements to review and oversight of Canada's national security and intelligence agencies
04/06/2015	Canada	<a href="#">Canada Submission to the UN Human Rights Committee</a>	In this submission, Amnesty International (AI) summarizes its concerns and recommendations laid out in detail in AI's full briefing prepared for the United Nations (UN) Human Rights Committee review of the sixth periodic report of Canada at its 114th Session from 7 to 8 July 2015.
23/02/2015	Canada	<a href="#">Time to Close Canada's Worrying, Growing National Security Review and Oversight Gap</a>	Bills C-44 and C-51 envision unprecedented disruptive and secretive powers for CSIS; a new criminal offence of promoting terrorism, in general, which will unquestionably clash with free expression; enhanced information sharing with foreign intelligence agencies; and a broadened sense of national security which extends beyond acts of terrorism into expansive notions of security which include Canada's 'financial and economic stability'.

15/10/2012	UK	<a href="#">Left in the dark: The use of secret evidence in the United Kingdom</a>	Over the past decade, there has been an ever increasing reliance on secret evidence by the UK government in the name of national security. Amnesty International believes that this growing resort to secrecy undermines basic standards of fairness and open justice. This report examines the increased use of what is described as a “closed material procedure”, which allows the government to rely on secret evidence presented to the court behind closed doors, in a range of non-criminal judicial proceedings in the UK.	Anti-Terrorism, Crime and Security Act
09/02/2012	USA	<a href="#">US failure to address as an ongoing human rights issue and to ensure accountability and remedy for past abuses in the counter-terrorism context</a>	The USA's continuing failures in the specific area of counter-terrorism are not only undermining its impact as a serious and potentially powerful advocate for human rights. It is also providing other governments with political cover for gross human rights violations they perpetrate in the name of countering terrorism. These side effects of the USA's failures to engage with the human rights dimensions of its counter-terrorism measures are doing significant damage to respect for human rights more generally.	
09/09/2010	USA	<a href="#">Secrecy blocks accountability, again</a>	Today the USA is widely seen as having systematically violated human rights in the name of national security after the attacks of 11 September 2001 and to have done so undergirded by measures to facilitate impunity.	
06/09/2010	UK	<a href="#">Submission for the review of counter-terrorism and security powers</a>	On 13 July 2010, the Home Secretary announced a “rapid review” by the Home Office of key counter-terrorism powers. The purpose of this submission is to outline Amnesty International's primary concerns in relation to four of the six powers under consideration; the control orders regime; the use of diplomatic assurances in the context of national security deportations; the 28 day limit for pre-charge detention of people suspected of terrorism-related activity; and the use of stop and search powers under section 44 of the Terrorism Act 2000.	



12/07/2010	Australia	<a href="#">Submission to the UN Universal Periodic Review</a>	Amnesty International Australia identified significant shortcomings in Australian National Security Legislation with respect to control orders, preventative or administrative detention, and the Australian Security Intelligence Organisation's broad powers to detain and question people, including non-suspects. Amnesty International is concerned that Australia's counter-terrorism laws violate its obligations under international human rights law, in particular the rights set out in the International Covenant on Civil and Political Rights. A key concern is the provision in the laws to keep people in detention without charge.	
30/11/2009	USA	<a href="#">Blocked at every turn. The absence of effective remedy for counter-terrorism abuses</a>	Indeed, more than 10 months after President Obama took office, the lack of remedy for human rights violations committed against detainees held in US custody in the name of "countering terrorism" remains the rule rather than the exception. A combination of executive secrecy, judicial deference to the invocation of national security or war powers by the political branches, domestic party politics, and the USA's non-compliance with its international human rights obligations, continues to contribute to the absence of accountability.	
03/09/2008	USA	<a href="#">Security and Human Rights: Counter-Terrorism and the United Nations</a>	Amnesty International's brief survey of countries all over the world shows that following the 11 September 2001 attacks on the USA, and attacks in other countries since, a wider range of counter-terrorism laws, policies and practices have eroded human rights protections as governments claim the security of some can only be achieved by violating the rights of others. The voices of human rights defenders, political opposition leaders, journalists, people from minority groups and others have been stifled.	USA PATRIOT Act of 2001

23/02/2006	UK	<a href="#">Human rights: a broken promise</a>	Since 11 September 2001, the UK authorities have passed a series of new “anti-terrorism” laws. Amnesty International is concerned that the UK government has successfully sought the enactment of legislation that curtails judicial powers. The organization remains concerned about the adequacy and extent of the accountability of UK armed forces personnel for their actions abroad. Amnesty International considers that the UK government has failed to deliver on its promise to “bring rights home”. At the end of this report, which includes illustrative case, Amnesty International makes a series of recommendations to the UK government.	Terrorism Act 2000; Anti-terrorism, Crime and Security Act 2001
30/09/2005	UK	<a href="#">United Kingdom: Amnesty International's briefing on the draft Terrorism Bill 2005</a>	Amnesty International considers that some of the provisions in the draft Terrorism Bill 2005 are inconsistent with the UK’s obligations under domestic and international human rights law and that, if enacted, may lead to serious human rights violations. In this briefing, Amnesty International’s comments are confined to the offences set out in Part 1 of the Bill, including the new offences of “Encouragement of Terrorism” and “Dissemination of Terrorism Publications”, Clause 17 concerning new grounds for proscription, as well as the proposal to extend the maximum limit of detention in police custody without charge to three months.	Terrorism Act 2006 (formerly Terrorism Bill 2005)
23/04/2000	UK	<a href="#">UK: Briefing on the Terrorism Bill</a>	The UK government has issued, for parliamentary debate, the “Terrorism Bill” in which it seeks to introduce -- into permanent legislation -- provisions which either directly contravene international human rights treaties to which UK is a party, or may result in human rights violations. Most of them are present in current emergency or temporary legislation , which in the past facilitated serious abuse of human rights, extensively documented by the organization throughout the years. As a result, Amnesty International has grave concerns about this Bill.	Terrorism Act 2000

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# HONG KONG

## SUBMISSION TO THE SECURITY BUREAU ON BASIC LAW ARTICLE 23 LEGISLATION PUBLIC CONSULTATION DOCUMENT

Amnesty International believes that the proposals set out in the Consultation Document for the enactment of Article 23 legislation under the Basic Law in many instances are contrary to international human rights laws and standards. Amnesty is concerned that the definition of national security is overbroad, that newly proposed or amended offences lack legal clarity and demonstrated necessity and proportionality, that procedural rights may be weakened, and that if enacted, the legislation could lead to violations of the rights and freedoms of the residents of Hong Kong and others. Many of the proposals are not necessary nor proportionate for a legitimate national security need.